# *From the Editors*

## The Rise of Sociology of Law: Some Records for a Historical Review

### 1. Foreword

Dear Colleagues,

On the occasion of the celebration of the 50th anniversary of the ISA-RCSL's foundation at the University of Warsaw, it is a real pleasure, as a socio-legal scholar and current President of the Research Committee on Sociology of Law of the International Sociological Association, to open a discussion that cannot be missed at this stage of our discipline: a discussion on the historical rise, development and prospects of sociology of law.

The importance of the topic is self-evident: indeed, the coupling of the two basic analytical hypotheses that, according to Jean Carbonnier, qualify and orient our disciplinary fieldwork, that is the evolutionary mobility and relativity of law in space and time and the specific structural conformation and position of law in any given historically determined context, i.e. the existence of a plurality of legal phenomena as well as of forms and models of legal pluralism (Carbonnier 1965) is much more complex today than ever before. The variables that give rise to such a complexity today require one to look back at the scientific achievements to date, and move ahead towards more theoretically plausible explanations and more empirically adequate social and legal outcomes.

As an entry point to the discussion, a synthetic account of the pivotal disciplinary paths that have been made so far seems the best way of laying the preliminary grounds for discussion.

For this purpose, allow me to follow the general outline of the introductory speech on "The international internationalisation of sociology of law" that I had the opportunity to give on the occasion of the First Congress of the newly created ABraSD – the *Associacao brasileira des pesquisadores em sociologia do dereito* – held in Niteroi (Rio de Janeiro) in 2011 (Olgiati 2011).

I will start by recalling the very early birth of sociology of law as a *theoretical* discipline concerned with, and related to, a mix of cultural and struc-

tural changes of *international* epochal relevance, as well as an *empirically-oriented* disciplinary endeavour deeply concerned with context-based, social, political and institutional *local* issues, all raising a specific perception about law-policy making and the broader social dynamics. In this respect, the rise of sociology of law in Italy will be taken as an exemplary case in point.

Moving on from the above, I will briefly mention the *international milieu* that characterised the original assessment of sociology of law in the course of the 20th century: a *milieu* that, quite interestingly, gave rise to a significant variety of *national* socio-legal schools-of-thought and approaches, which in turn enabled a consolidation of the *theoretical and methodological* credentials of sociology of law either as a *specific* scientific discourse or as an officially recognised *academic* subject-matter.

Finally, I will deal with evolutionary trends presently shaping the field to show the diverging paths currently at stake and the problematic disciplinary issues that they are giving rise to.

## 2. The Early – but Still Living – Original Roots of Sociology of Law

As we know, a great deal of variables that are a constitutive part of the content of what we currently label 'Sociology of Law' stem from theoretical reflections and empirical experiences that – for different reasons and conditions, and according to different approaches and data – have been made since ancient times and everywhere as a sort of *civilisational prosthesis* to promote and/or keep under control any sort of ups-and-downs provoked by the variety of ongoing interplay between law and society. In this respect, a typical pattern of the discipline is that certain historically determined *pre-social/scientific roots* of what we now refer to as 'sociology of law' cannot be dismantled, repressed, or abandoned at whim or by force. Even less so today, i.e. in a period in which epochal paradigmatic changes compel us to question the very inner '*rationale*' of both the *Ratio Juris* and *Ratio Status* of our current and prospective human and environmental conditions.

Indeed, the above pattern makes clear an important point: that sociology of law did *not* emerge directly and consequentially as a sub-disciplinary fieldwork of general sociology as such. Surely, the scientific area and mission of sociology of law today is commonly acknowledged to be part of that cultural enterprise that aims to 'scientifically' decipher, according to given 'scientific' techniques, how and why law is nurtured, applied and somehow disregarded by society, as well as why and to what extent social dynamic is conditioned by law's theoretical and factual creation and enforcement. Yet, even before the birth of the term

'sociology', our field of work always transcended such a *prescriptive* – historically-determined – disciplinary description, for the simple reason that it has always been – and still is – impossible to reduce the effervescence of socio-legal dynamics to a mere univocal label and 'repress' its past and present *pre-scientific* – biological, cultural and environmental – dimension.

As a matter of fact, right from the start, what we define as 'sociology of law' has been nurtured, directly or indirectly, by a variety of *non-sociological* theories and approaches. In turn *non-scientifically produced* legal standards and institutional arrangements have *always* been *normatively* enforced – and still are being enforced – to deal *in some manner* with certain human behaviours or to rule given social and natural facts. Last but not least, how can one ignore the fact that even in the self-proclaimed most advanced societies, culturally refined social movements and political lobbies have been able – and still are striving – to impose their own legal doctrines and cogent social standards according to *pseudo-scientific*, i.e. ideological, interests and values?

As regards the contribution of *non-sociological* approaches that have acquired an official academic recognition as veritable *scientific sources* of sociology of law, it is worth mentioning here the variety of legal doctrines regarding codification, institutionalisation and legitimation, etc., or scientific insights drawn from other disciplinary areas such as philosophy, anthropology, history, ethnography, criminology and psychology, etc.. As regards the contribution of *pseudo-scientific* doctrines and cultural movements that had, and still have, a great part in shaping direct lines of enquiry and the contours of our field, suffice here to mention predicating socio-normative political ideals such as nationalism, liberalism, communitarism, socialism, corporatism, etc. (Nisbet 1966).

Having said this, however, one might wonder: why is it important to keep in mind such pre-scientific roots, and to do so here and now?

Well, it is because at the turn of the 21st century basic questions about the possibility of a suitable and environmentally feasible 'social order' are once again heading our concerns, and this is occurring at both a global and local scale in line with a variety of new political trends and new social expectations, some of them recalling and even up-dating, explicitly or implicitly, the rise of *age-old* social *traditions* and *pre-modern* legal devices.

## 3. The Rise of Sociology of Law as a Disciplinary Field (1880-1910)

Having briefly outlined the irrepressible reference to pre-modern and pre-scientific patterns that still constitutively qualify the discipline, let me

now turn the focus to the very early rise of sociology of law as a scientific field.

In a recent book entitled "Sociology of Law. Visions of a Scholarly Tradition", the author, Mathieu Deflem, stated that the first scholar who explicitly used the term 'sociology of law' was an Italian professor, Dionisio Anzillotti, in 1892 (Deflem 2008: 273). Unfortunately, Deflem's statement is not correct at all.

The term '*Sociologia giuridica'* was used, for the very first time, in the *text* of a work by an Italian scholar, Francesco Agnetta Gentile, published in 1881. The same term can be found, for the first time in the *title*, in '*Principi di sociologia giuridica*' by Salvatore Ursini-Scuderi, Professor of International Law at the University of Palermo, published in 1887. We have Francesco Filomussi Guelfi in turn to thank for using the label '*studio sociologico del diritto*' in a lecture given in 1886 at the University of Rome on "*La codificazione civile e le idee che ad essa si riferiscono*", while we owe also to Francesco Agnetta Gentile the use of the term in the *title* of his volume "*Corso Superiore di sociologia del diritto, ordinata ideologicamente: tentativo scientifico di un progetto unico internazionale del corso universitario di filosofia del diritto pura*", published in 1890.

It was not until 1892, as has been noted, that Dionisio Anzillotti used the term '*sociologia del diritto*'. Worth nothing in regard to the above is that the very first use of the same term in France can be found in the volume by Leon Duguit "*Des fonctions de l'Etat moderne: étude de sociologie juridique*" published in 1894 .

However, what is absolutely outstanding in regard to the early rise of sociology of law as a proper field of science – a historical fact that the celebration of the ISA-RCSL Jubilee in Warsaw provides with a full, meritorious, official revival and recognition – is that we have another Italian, Carlo Nardi Greco, to thank for the very *first book* entirely devoted to the *theoretical assessment* of the discipline *as such*, titled "*Sociologia giuridica. Contributo*", printed in Turin as long ago as in 1906 (Nardi-Greco 1906).

Unfortunately, Nardi-Greco's name and work could not achieve major academic acknowledgment at the time, in spite of the fact that the book was translated and re-printed in Spanish, because he died shortly afterwards. In 1912, only seven years after the editing of Nardi-Greco's volume, Eugen Ehrich published his well-known "*Grundlegung der Soziologie des Rechts*" (Ehrlich 1912).

Ehrlich's work surely marked and still marks a milestone in the historical early rise of sociology of law as a disciplinary field, which also occurred thanks to the equally internationally well-known harsh critical debate he led

against Kelsen. In any case, it is worth noting here that Nardi-Greco's and Ehrlich's socio-legal theorisings were nurtured by quite similar historical and institutional backgrounds, directly related to complex and deep-rooted country-specific cultural experiences – linked to stratified forms of socio-legal pluralism.

Significantly, the Italian contribution to the rise of sociology of law includes an additional issue: it was in Italy that the field began to be developed as a proper disciplinary subject-matter according to an *interior differentiation*. This occurred in order to deal specifically with *empirical* issues considered socially and legally relevant as both *facts* and *values*.

In 1883 a criminologist, Enrico Ferri, used the term '*sociologia giuridica*' in his book "*Socialismo e criminalità*". In 1891 Lorenzo Ratto published the paper "*Le leggi dello Stato: studio di sociologia giuridica*". In 1892, Adolfo Zerboglio published the book "*L'alcoolismo. Studio sociologico-giuridico*". In 1893, Eugenio Florian published "*La teoria psicologica della diffamazione. Studio sociologico giuridico*". In 1897 Eugenio Florian e Guido Cavaglieri published the first volume of "*I vagabondi. Studio sociologico giuridico*". And in 1900, Afredo Angiolini published "*Dei delitti colposi. Studio sociologico-giuridico*" (Conte 2010).

Given all the above, it is therefore no accident that the very *first* Sociological Association of international standing, the *still-existing* IIS, *Institut International de Sociologie* – was founded in Italy in 1893, while the London School of Economics and Political Sciences was then founded in 1895 and, thanks to Emile Durkheim, the very first journal specifically devoted to sociology, the *Anneé Sociologique*, began publication in 1898.

As one can see, at the close of the 19th century, sociology of law in Italy had already set up and promoted *three* basic disciplinary areas of enquiry: (i) a proper *general sociological theory of law*, (ii) a genuine *intra-sub-disciplinary specialism* and (iii) an *international association,* each and all devoted to deal with social and legal issues of general political relevance according to action-oriented *problem-finding* and *problem-solving* approaches: three areas that are still the core issues of the discipline.

Unfortunately, the development of sociology of law in Italy was then truncated by the rise of a generalised cultural turn towards idealist legal theorising promoted at an official academic level. The rise of Mussolini's regime in turn reinforced the closure.

Retrospectively speaking, the imprinting of the above experience was noteworthy indeed, as since its very birth sociology of law was oriented by contributions from legal scholars who, displaying approaches from the organicistic to naturalistic, and looking at law from an evolutionist-positivist

perspective, were deeply concerned with the *relationship* between law *and* society as such, but also wanted to explain the particular as well as general *aims* of law *in* society (Treves 1983).

This cultural experience was also remarkable at an *international* level. On the one hand, it made clear that *divisions* were appearing *within* the ongoing law-and-society dynamic; on the other hand, it also made clear that such a dynamic was nurtured by a worldwide *epochal* change epitomised by the clash between two major 'universal' legal sources: the emerging *substantive* normative force of governance by economic corporations, and the *weakening* of the established *formal* normative organisation of the State. So much so that we are indebted to the Italian jurist Santi Romano not only for his outstanding institutionalist theory on legal pluralism (Santi Romano 1918), but also for defining such a clash as the signal of a generalised 'Crisis of the State'. This led in turn to a genuine age of '*Functional Feudalism*' due to the fact that – as the *sociological* insights provided by Italian *political* scientists such as Mosca and Pareto first suggested – such a turn was nurturing an absolutely new, *modern,* 'functional' type of socio-legal pluralism, clearly different form the *pre-modern* 'structural' (and *vertically* oriented) pluralism enforced in the Middle Ages, as a current revival and assessment – at a *horizontal* level – of a pillar of Gothic Law such as the principle of 'subsidiarity' now epitomised within the European Union (Olgiati 2007).

## 4. The Fundamental Milestones of Sociology of Law as a Proper Disciplinary Field (1910-1940).

The case of the rise of sociology of law in Italy prior to the 20th century cannot be undervalued. It shows historically that *three* basic general variables were at the core of the disciplinary discourse right from its beginning: (i) the socio-legal consequences of economic and scientific changes; (ii) the socio-legal implications of interior and exterior social or class mobility, as far as public order was concerned; and (iii) the gap between living socio-normative attitudes of society at large *versus* official State-law enforcement.

As these three general variables – *mutatis mutandis* – are still on the agenda and their impact is notable at a worldwide level, let us now focus on the paths that socio-legal scholars took or followed throughout the 20th century, in order to outline the extent to which sociology of law has been able develop its disciplinary discourse at academic level.

At the very beginning of the 20th century, a variety of new general socio-legal theories were created, while different methodological guidelines were compiled to openly contrast the once hegemonic position of legal idealism,

formalism and conceptualism at cultural, political and institutional levels. As the common target of criticism was precisely the questionable hegemonic position of such theoretical lines of enquiry, French and German scholars such as Geny, Duguit, Ehrlich and others had the opportunity to devote their efforts to assessing an absolutely innovative approach that soon turned out a veritable cultural movement, labelled '*Freie Rechtsfindung*'. In this respect, it comes as no surprise to note that the 'establishment' of the discipline – as a proper *sui generis* disciplinary field – can now easily be determined in relation to the rise of such a cultural movement, as it allowed the pursuit of a *systematic re-framing* of the social perception of law in society, and this according to a direct reference to the new trends stemming from emerging, social, economic and political demands.

In the course of time, given the different cultural and disciplinary backgrounds of various influential socio-legal scholars (Gumplowicz, Renner, Petrażycki, Gurvitch Weber, Pound and Geiger, to name but a few), the socio-legal lines of enquiry varied considerably. So much so that, since then, sociology of law as such has been and still is characterised by significant intra-disciplinary *bifurcations* and *overlappings*, the most relevant of which have for quite a long time been those originally promoted (i) *within* the province of (legal, conceptual and jurisprudential) *antiformalist* approaches (Kantorowicz and Jhering's 'struggle for the law', Holmes and Llewelling's 'legal realism'), (ii) *within* the province of (social and political sciences?) *functionalist* and/or *conflictualist* approaches (from Parsons's 'social control' to the so-called 'critical legal studies') and (iii) *within* the province of *neo-institutional* and even '*revisionist*' (later *systemic*) approaches.

Interestingly, since then analytical bifurcations, overlappings, cross-fertilisations and interplays of any sort have been a recurrent *leit-motiv* in the whole scientific output of socio-legal scholars in any part of the world.

## 5. The Problematic Disciplinary Institutionalisation of Sociology of Law (1940-1960)

As has been noticed, from 1910 to 1940, the disciplinary 'establishment' of sociology of law occurred internationally by virtue of an un-programmed variety of collective efforts aimed at critically rejecting or revising the predominant official legal culture still supported, by rule, by idealistic and formalistic State-law-centred theorising and enforcement.

It was during the period of 1940-1960, however, that such a strategic aim proved either *problematic* or *necessary*, as rejection and revision of traditional doctrinal patterns occurred, in turn, *also* by means of top-down

official programmes implemented by political institutions and academic centres. These were explicitly oriented towards the strategic re-framing, driving or impeding of specific contents and scientific aims, and even the results of socio-legal study and research as such.

The most extreme case in point is that of totalitarian regimes. In Italy, Spain, Germany and the Soviet Union, but also in other countries around the world, cultural, institutional and academic policies were pursued up to the point of physically impeding teaching and preventing disciplinary exchanges between scholars and among their communities. In Italy sociology was, so-to-say, 'covered' by the doctrine of corporatism. In Russia, from 1940 up to Stalin's death, sociological teaching and research – already well developed and institutionalised in the country – was repressed and banned at university level. The same occurred in Romania in 1948. In other Eastern European Countries of the Soviet Bloc, the teaching and research of sociology of law was not formally banned, but was *de facto* radically reframed under the label of 'Social Control'.

In Poland, thanks to the leading figure of Adam Podgórecki, academic instruction and research was somehow possible – in spite of enormous difficulties – up to 1960 within the framework of the so-called 'KOL' (Knowledge and Opinion about Law) programmes, acting as a theoretical and empirical tool for promoting workable 'social engineering' projects. During its course, such scientific activity was increasingly questioned by the political establishment and, as a result, in the 1970s Podgórecki had to leave the country, moving first of all to Sweden, then to England and ultimately to Canada.

A different experience occurred in Japan: in 1945 an Association of Sociology Law was founded there as a cover-up for young anti-government socio-legal scholars. It pursued Marxist-oriented political activities up to 1975. From 1975 onwards – sponsored by the ISA-RCSL – the Association explicitly abandoned such activities, and reverted to scientific socio-legal studies and research (Podgórecki 1999).

Top-down official measures aimed at strategically orienting the disciplinary field towards general political aims were also implemented after World War II. The most outstanding instance was the programmatic cultural policy carried out under the influence of the Cold War's political ideals and values predominant in the USA.

However, when the tensions eased, a new general climate flourished. The process of founding the International Sociological Association started in Paris in 1948 under the auspices and on the initiative of the Social Science Department of UNESCO, with the explicit official aim "to prevent the circumstances which produced fascism and led to war", i.e. to actively pro-

mote democratic values (Platt 1998:13). In cultural terms, the strategic mission of the ISA was formalised as follows: promotion of sociology as science and action; encouragement of study and research (emphasis on its scientific character and practical orientation); encouragement of cross-national work; creation of instruments suitable for comparative studies; exchange of information (documentation, etc.); and personal contacts (international meetings, research support, etc.).

According to the above, 'Sociology' as such was explicitly conceived by the ISA as a problem-solving and action-oriented endeavour: as a general task that perfectly matched the original socio-legal theoretical and empirical approaches of the late 19th and early 20th centuries. Accordingly, it comes as no surprise that in promoting the establishment of the ISA foundation, active participation by a group of socio-legal scholars was particularly significant.

In 1949 a Constituent Congress was planned and a Preparatory Committee was set up to arrange the official birth of the ISA, and the Congress gathered together 21 countries. The first ISA World Congress was held in 1950 under the general theme of "Sociological Research in its Bearing on International Relations". From 1951 onwards, papers on stratification and class mobility, as well as the teaching of sociology, dominated the ISA Congresses. Teaching sociology was strongly supported by UNESCO, as documented by the ISA Series "Current Sociology" which started in 1952. Quite soon, however, an increasing variety of topics came to the fore and UNESCO-related themes became less central. The time had come, therefore, not only to reframe the ISA Congress' programmes but to move on from occasional thematic group sessions to officially institutionalised Research Committees, dealing with specific sub-disciplinary sociological areas. This occurred in 1959.

During the entire fifties, US cultural influence within sociological study and research was undoubtedly crucial as far as development of the above-mentioned UNESCO and ISA programmes were concerned. Not only were US foundations able to grant scholars from Third World countries regular subsidies to attend ISA World Congresses, but US Research Centres were able to promote long-term research projects and involve Third World countries' scholars in topics with law-policy relevance, e.g. "Law and Development" (Depeuch 2006).

Given all the above, starting from 1953 the ISA also officially included as its members newly created national sociological associations – which in fact were accepted as '*Collective* ISA members' or 'national ISA *Affiliates*' – and approved the creation of structures of a new type – the ISA Research Committees – devoted to tackling particular, pre-defined, sub-disciplinary sociological areas.

## 6. The Foundation of the ISA-RCSL, the Academic Recognition of Socio-legal Education, and the Rise of National Socio-legal Research Centres (1960-1980)

The period of 1960-1980 can surely be defined as the time of the most remarkable assessments of our discipline at any level, given (i) the official institutionalisation of sociology of law within an internationally renowned Research Committee; (ii) its official recognition not only as a scientific disciplinary area but also as a proper academic subject-matter, and (iii) the spreading of national socio-legal research centres. As such issues will provide sustenance for discussion by other colleagues, I shall refrain from entering into the matter here, save for a short look back to a pivotal historical date: 1962.

During the General Assembly of the ISA World Congress held in Washington DC in 1962, a resolution – moved by Podgórecki and Evan to establish an ISA Research Committee specifically devoted to Sociology of Law – was formally approved, and Renato Treves was elected as the first ISA-RCSL President.

To provide a better view of the cultural climate of the period in question, let me turn our attention to another, totally different but highly symptomatic, epochal event for our discipline: a rather unknown experience which occurred in Brazil in 1962, i.e. in precisely the same year in which the RCSL was established.

It was indeed in 1962 that for the first time in Brazil – in spite of the fact that "*Sociologia Juridica foi vitima de uma tradiçao jusfilosofica 'culturalista' que inibia o desvolvimiento da pesquisa socio-juridica*" (Faria & Campilongo 1991: 45-46) – the Catholic University of Pernabuco officially established a teaching course for undergraduates in 'Sociology and Sociology of Law'. This event was not in fact at all isolated. As early as 1963 the Federal University of Recife established the very first university postgraduate course of 'Sociology of law' as such. Two years later, in 1965, a group of Brazilian socio-legal scholars worked in a newly created Institute at the Division of Human Sciences of the Federal University of Recife: the very first Brazilian Institute devoted to systematic socio-legal research projects. Interestingly, the first project was connected with another programme devoted to the 'perception and idea of justice' carried out at the University of Colonia, Germany.

The above-mentioned Brazilian experiences could not be omitted here, as they not only epitomise the rising reputation and assessment of the discipline internationally, but also mark the scientific and academic impact that socio-legal theories and empirical research was gaining at an institutional level in (once labelled) 'developing countries'.

As far as Europe was concerned such an assessment moved along the same path, as demonstrated by the number of Socio-Legal Institutes and Research Centres that were created within the institutional framework of national University systems. This was the case – for example – of the establishment of the Centre for Socio-Legal Studies at Wolfson College in Oxford in 1963; of the Department of Sociology of Norms and Social Pathology at the University of Warsaw in 1967; of the Centre of Sociology of Law at the Law Faculty at St. Ignatius University Antwerp in 1972; and the Division of Sociology of Law, Luna University. The rise of other independent Centres, such as the Laboratorio de Sociologia Juridica of San Sebastian in Spain, as well as socio-legal Sections within National Sociological Associations, has been equally as significant. Within such a general trend, special mention is deserved for the number of newly-created journals specifically devoted to the discipline in almost any part of the world (Ferrari 1990), and – last but by no means least – the introduction of official academic teaching courses on Sociology of Law in Law Faculties in an increasing number of countries (Treves & Ferrari 1976). Such international academic recognition, in turn, could not but have a great impact on the dominant legal doctrines and educational programmes.

What has been said so far, however, has to be placed in its broader historical context, and as such understood with reference to it. As a matter of fact, the period under consideration was one in which social movements in the so-called 'advanced countries' began to ferment protests and street riots (now referred to as the 'French May'), i.e. not only a period of – let's say – extraordinary social, cultural and political effervescence, but also of severe dismay and criticism *vis-a-vis* officially established socio-political and institutional systems.

Inevitably, as far as the disciplinary field of sociology of law is concerned, the decade of 1968-1978 was also a period of internal struggles and divisions along disciplinary discourses and ideological lines of enquiry. Unfortunately it is impossible to deal with this topic in detail here, save to stress that the '*creative destruction*' that occurred internationally within our discipline had relevant long-term consequences at all levels as it led to a substantial '*diaspora*' within the disciplinary community.

Given such a context, we are certainly indebted to André Jean Arnaud for one of the most enlightening problematisations of the rising instability, if not precariousness, of the theoretical core issues of the 'state-of-the-art' of each and all socio-legal discourses within the wider realm of *both* law-*and*-society and law-*and*-policy with the editing of a study significantly titled "*Critique de la Raison Juridique. Ou va la sociologie du droit*" (Arnaud 1981). In turn it is worth noting that similar questions were raised by a number of other socio-legal scholars in many parts of the world.

Altogether, it is possible to state that the empirical evidence of (i) the overlapping of a generalised 'crisis of legitimation' and a rising 'fiscal crisis' within the existing Nation-State models, (ii) a worldwide socio/cultural mobility, and (iii) an unstable 'balance of power' at technological and political levels proved the catalytic occasion for socio-legal scholars to openly perceive the rise of a veritable, necessary, paradigmatic epistemic turn in the Kuhnian sense (as – *mutatis mutandis* – occurred at the very emergence of the discipline!) and therefore to be called upon again to face the allegedly universal 'promises' of (western-centred) legal Modernity and sort out a more plausible socio-legal design for society at large.

## 7. The Rising Paradoxes of the Disciplinary Field: a Search for new Socio-legal Insights and the Interior Fragmentation (1980-2000)

It was undoubtedly the cultural impact of the above-mentioned political-institutional context within the ongoing disciplinary discourse that suggested – or better, that drove – Andrè Jean Arnaud to move again towards another epochal enterprise: to fix a common, general, historically-determined and all-encompassing cultural reference point for the whole socio-legal community. In other words, the coordination and editing of the very first "*Dictionnaire Enciclopédique de Théorie et de Sociologie du Droit"*: a veritable '*summa'* of basic tenets of the discipline to date (Arnaud 1988).

Indeed, it was his personal achievement to have immediately perceived and actually tried to reduce (if not prevent) the approaching potential danger of an uncontrolled '*babelisation*' (confusion and misunderstanding) and '*Balkanisation*' (fragmentation by specification) of sociology of law. In this respect, the "*Dictionnaire Encyclopedique de Theorie ed de Sociologie du Droit*" was, and still is, one of the most precious and 'enlightened' reactions against those disquieting scientific approaches endangering the core value of the discipline.

As if that were not enough, it was the historical juncture of problematic uncertainties raised by another epochal trend, European Unionism, that led Arnaud to turn to a radically new enterprise: the involvement of the Basque Country Government in the promotion of studies and research tailored to allow practical arrangements suitable for coping with the current socio-legal and political-institutional EU process. It was not by mere chance, therefore, that in 1989 the Government of the Basque Country and the International Sociological Association, with the intermediary role of the RCSL Father Founders, agreed to establish the very first International Institute for the Sociology of Law in Oñati, Gipuzkoa, Spain.

The foundation of the Oñati IISL may by any means be considered the most outstanding achievement of the RCSL: within the ISA, the RCSL is still the only RC that has been able to set up such a specific international, *qualified*, infrastructure.

So far the Oñati-IISL has promoted not only studies, research groups, seminars, workshops, lectures and conferences, etc., but also disciplinary documentation and education (Olgiati 1990). Its International Master Course in Sociology of Law is now a part of the European Higher Education System and is annually attended by students from practically all over the world. Equally notable is the number and variety of IISL publications concerned with studies and research carried out at the IISL in socio-legal sub-disciplinary areas. At present, the IISL Library is the largest library in the world specialised in the disciplinary field of sociology of law. In fact, this is so much so that the IISL classificatory system has been specifically tailored for the rising variety of sub-disciplinary thematic areas of the discipline.

In the meantime, it is worth noting that all over the world new socio-legal centres and associations have been created to deal directly or indirectly with the many fields and sub-fields that comprise the field today. Indeed, never before has sociology of law boasted such a number of practitioners, structures, lines of enquiry, and *results*.

Yet, as often occurs, all that shines is not gold. To a large extent such evidence can be considered a positive sign of the vitality and attractiveness of the discipline as such. It is equally apparent, however, that either the inner analytical coherence of socio-legal discourses or the disciplinary boundaries of certain research are becoming increasingly uncertain or undetermined. Besides, it is apparent that (i) the rising amount of rather *undefined* application of methods and concepts, and/or (ii) an *ephemeral* accumulation of disparate data, and/or (iii) the *incoherent* treatment of research methods, and/or (iv) a *highly selective* area of enquiry are leading together to a (v) *superficial* analytical account and operative use of the work done as well as (vii) *questionable* meaning of the research context involved.

To the extent that the sectorial fragmentation of socio-legal sub-disciplinary fields is growing, and the number of specialised publications is rising, some socio-legal researchers are inclined also to reduce such complexity by making *no reference* to previous studies or to more general but nevertheless significant insights: in brief, they are inclined to disregard the *deontological* and *methodological* requirements typical of proper scientific activity, just 'as if' irrelevant. On the other hand, as methodical data collection on the ground and cross-evaluation of other sources of cognition compel long-term endeavours, the real outcome is quite often that data already studied

and commented on turns out to be seriously up-dated, and therefore less significant for their own original operational goals, even *before* publication of the given research project has commenced.

It is within such an ongoing scenario that a different, but equally disquieting trend is now occurring: the so-called '*academic purging*' – i .e. the systematic overturn or reframing – of pre-existing and previously acknowledged legal concepts or social insights on the part of organisations aiming at selecting, confuting, depowering and even dismantling basic scientific achievements and cultural representations relevant for the political legitimacy of official institutions and public discourse (Wacquant 1999).

If one then adds that all that has been said so far stems from the fact that contemporary society is now characterised by an unstable *geo-political* base, in which different legal discourses are used to promote veritable *new* 'struggles for the law' to gain or defend given forms of 'organisational dominance' over certain social dynamics or institutional domains, one can easily understand the degree of cognitive uncertainty and scientific eclecticism that characterises current analysis regarding prospective directions – either as *fundamental curves* or as *occasional nuances* – about law-and-society mainstreams at present.

This being so, one might wonder: where is sociology of law going now?

## 8. Where is Sociology of Law going Now? The Declining Heuristic Value of System Theory and the Challenges of Current Socio-legal Pluralism to Environmental Dynamics

Questions about the future of the discipline are not new, as the path-breaking endeavours of André Jean Arnaud cited above go to demonstrate.

Altogether, the social, political and institutional *necessity* to acknowledge the limits, loopholes and inconsistencies of legal thinking, law-making and law-enforcement *vis-a-vis* the broader social dynamics historically showed the *utility* of the rise and scientific development of our discipline. In this respect we can say that the original *critical imprinting* of sociology of law is, and should always be in the final instance, its major *value*.

Yet, as law cannot be exclusively conceived any more as the product of a self-referential State-centred 'positive' legal system – as space-time variety and relativity of a variety of other legal systems, as well as of the plurality of forms of current legal pluralism are uncontroversial matter of facts – it could be quite reasonable to think about a revision of the label of our disciplinary field and re-name it 'Sociology of *Laws*'.

If so, there are two issues worth considering as regards the future of our discipline: one about the *value* of its current and prospective critical poten-

tial; the other about its own *object*, i.e. law as a dynamic complex of a variety of new forms of legal pluralism.

Given the relevance of these two issues, in my conclusion allow me to try and draw up a plausible future.

In recent decades, the most influential sociological approaches to 'law' shared the same epistemic evolution that occurred in general sociology: i.e. a move from the 19th century '*production*' paradigm to the late 20th century and current '*communication*' paradigm, or – if one prefers – the move from top-down law-policy-making, to 'net-working' socio-legal 'transmission' and 'consumption' of normative discourses and arrangements (due to the rising importance of technical devices) (Olgiati 1998).

As we know, in the course of all of his work, the renowned scholar Luhmann tried to reinterpret the coupling between these two disciplinary paradigms by reframing and up-dating law as a veritable *system*, in terms of systemic communication within a line-of thought based on a sharp distinction between 'systems' and 'environment'. Unfortunately, however, this occurred just at the time in which – as Schutz put it – "the twilight of the Global Polis" was becoming a matter of fact, as the very distinction of systems from environment "stipulates the system's contingency", that is the fact that "systems' very capacity for self-continuation is ceaselessly at risk" (Schulz 1997: 207). This was and is so much the case, that as early as in 1971, Luhmann himself hypothesised that law, as a specific social system, would experience a radical fragmentation at world system level, and in 1993 he also stated that new intersystemic forms of conflicts of law would emerge to such an extent that law itself would become entangled with sectorial interdependences (Luhmann 1993). In 2004, Fisher-Lescano and Teubner quoted these statements by Luhmann in a paper significantly entitled "Regime Collision: The Vain Search for Legal Unity in the Fragmentation of Global Law" (Fisher-Lescano and Teubner, 2004), and since then all systemic socio-legal theorists are desperately dealing with such a 'regime collision', referring to the unavoidable problem of the *paradoxical functioning* of legal systems due to their own systemic nature (instead of declaring *apertis verbis* that "self-referential systemic closure of legal systems" – if it ever occurred – turned out more impossible than ever, or never occurred systematically due to the uncontainable social-natural *puissance* of micro/macro environmental dynamics).

By contrast, if we look at the socio-legal legacy of a 'classic' such as Podgórecki, we immediately realise that he was one of the first scholars who, since the 1950s, intuitively perceived a paradigmatic shift from the 'production' paradigm to the 'communication' paradigm, *although* he was actually

concerned with the problematic (in-)coherence among the above paradigmatic variables in regard to the *social-scientific perception* of ongoing social "knowledge and opinions about law" of the time within a real, historically determined, context, in order to be able to promote appropriate 'social engineering' projects. It was not by chance, therefore, that his focus on such 'cognitive' and 'interactional' patterns was not formal/abstract, as always referring to real human beings and related to specific action-oriented operational results (Podgórecki 1985).

As one can see from the above, to question "where sociology of law is going now" (as occurred at the early stage of the discipline) is to question which kind of approach could provide the best *critical* 'lenses' to decipher nothing less than the presence or absence of veritable *critical* 'openings' as regards the matter under scrutiny and operative directions for potential solutions.

Let us now consider socio-legal approaches concerned with ongoing 'legal pluralism'.

If one makes reference to an author such as Teubner, one can learn that the rise of an all-encompassing 'Global law' is leading to a veritable 'Global Bukovina'. A reading of Sousa Santos' works teaches, by contrast, that positive law is a genuine 'map of misreading', and that all normative realms are now trapped in an increasingly a-symmetrical, a-synchronous and a-systematic differentiation and fragmentation due to the collapse of the universalistic pretension of the legal architecture of Western-centred Modernity and the sharp split between the North and South of the world (Sousa Santos 1995). The degree of this division is so severe that such a collapse is not only a matter of general concern for society at large, but is also one of the main reasons behind the rise of two additional collateral effects. On the one hand – and this is the most serious issue – there is the promotion of a variety of 'negationist' strategies (their implications) carried out by pseudo-scientific writers, self-proclaimed experts, journalists, etc., sponsored by media or foundations (as is also occurring in regard to general themes directly related to law-policy making, such as urban risks, climate changes, economic stagnation, human migration, etc.). On the other hand – and this is a consequential outcome – there is an increasing 'social disenchantment' with both legal creation and legal enforcement at any level and in any fieldwork. Significantly, these two trends are so apparent at present that a '*critical* distancing' from procedural and substantive legal arrangements has recently reached a genuine threshold as epitomised by studies about 'legal surrealism' (Warat 1988) and, more recently, 'legal nihilism' (Irti 2005). Luckily enough, however, such a widespread 'legal disenchantement' could also act as a precious and revitalising '*pharmacon*', as socio-legal study and research can demonstrate.

In Latin America traditional attempts to accomplish with Western-centred modernity's legal discourses and devices (human rights, democracy, welfare, etc.) are now to a large extent carried out according to reflexive, historically grounded, action-oriented perspectives able to recover ancestral legal experiences, to foster indigenisation of the same modern law, to rescue and emphasize the local folkloric legal pluralism.

In North America basic thematic issues are still about national and international law-and-order (re-definition of international world order by socio-legal import-export; law-and-development strategies; etc.). Yet the perception of increasing internal security and international disorder, emphasised by calls for preventative wars, or the current market crisis, now compels – and will compel even more so in the future – the re-design of even the preconditions of the normative arrangements that have been dominant so far.

In Europe almost any study and research now deals in one way or another with EU socio-legal variables (governance, enlargement, constitutionalisation, etc.) and their impact on a national or regional level (subsidiarity, welfare, judicial activism, etc.). As a consequence, attention has turned to the other side of the coin as well, i.e. to local issues and – not surprisingly – to expectations about newly-created normative scenarios of the future, in which normative patterns of the *Genius Loci* and the *Jus Naturae* are not banned at all, but rather re-vitalised as veritable 'added values'.

As one can see – and as we know by the works of the Classic of Sociology of Law – "*la Raison Juridique ne pas one-dimensional*" (Arnaud 1981). What really matters in an age of epochal transitions is therefore the ability to *critically* face current socio-legal arrangements and re-construct in a different, but socially plausible and institutionally adequate manner, the inner *value* of the *symbolic domain* of the many facets of the law(s).

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